
UTAH LABOR COMMISSION

LEX L. BRADY,

Petitioner,

vs.

YOUNG ELECTRIC SIGN CO.,

Respondent.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 2003948

Lex L. Brady asks the Utah Labor Commission to review Administrative Law Judge La Jeunesse's denial of Mr. Brady's claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. Brady filed a claim for workers' compensation benefits from Young Electric Sign Co. ("YESCO") for a work accident that occurred on January 24, 2001. Mr. Brady sought permanent total disability benefits and YESCO stipulated that Mr. Brady was permanently totally disabled, but disputed that the work injuries were the direct cause of his disability. Judge La Jeunesse held an evidentiary hearing and then, due to conflicts in the medical opinions, referred the medical aspects of the case to a medical panel. After adopting the panel's report, Judge La Jeunesse denied benefits.

In his motion for review, Mr. Brady argues that the panel's opinion was contrary to other, more persuasive medical evidence. Alternatively, Mr. Brady argues that a new letter from one of his medical providers should have been submitted to the medical panel for further consideration.

FINDINGS OF FACT

The Commission adopts Judge La Jeunesse's findings of fact. The facts relevant to the motion for review are as follows:

In 1996, Mr. Brady was involved in an auto accident and underwent a cervical spinal fusion. Prior to his work accident, Mr. Brady had a history of medical problems related to his lower back, right and left upper extremities, and asthma.

On January 24, 2001, Mr. Brady was assisting in the removal of a one-ton sign at work when the sign swung loose and hit him in the chest, pinning him for about 30 seconds. He reported neck, shoulder, low back pain, and, later, breathing difficulties. Over the next several months, he

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continued to receive medical care for his complaints. Then, on December 26, 2001, Mr. Brady was involved in another car accident. Mr. Brady was able to continue working, however, until June 6, 2003, when his hypoxia (respiratory condition) became too severe and he could no longer work.

The parties stipulated that Mr. Brady was permanently totally disabled; however, they disputed whether the medical impairments that left Mr. Brady disabled were directly caused by the work accident. There were multiple medical opinions that indicated either the work accident caused Mr. Brady's injuries or that the injuries were caused by preexisting conditions and subsequent injuries, particularly the second car accident. Dr. Pearl, Mr. Brady's pulmonologist, provided three reports regarding Mr. Brady's hypoxia. Dr. Pearl's March 10, 2004, report stated:

I suspect that with his history, that when he was crushed, he strained very hard and made the eventration much worse, thus contributing to loss of diaphragmatic movement and atelectases¹ on the right lung which has caused his hypoxemia. I can say this with reasonable medical certainty.

Therefore, Judge La Jeunesse appointed a medical panel to review issues of medical causation. The panel concluded that Mr. Brady's injuries from the January 24, 2001, work accident did not directly cause his disability. Specifically, the panel opined:

The medical panel finds no evidence that Mr. Brady's hypoxia should be considered a consequence of the accident on 1/24/01. . . . While it is true that the incident on 1/24/01 did likely increase pain problems for Mr. Brady, the clinical records in this case indicate that difficulties in management of the overall pain problems and onset of the hypoxia occurred after the auto accident of 12/01. Therefore, the medical panel finds it likely that Mr. Brady would not have encountered hypoxia absent the auto accident in December 2001.

After receiving the medical panel's report, Mr. Brady submitted another letter from Dr. Pearl, dated August 15, 2005, for additional consideration from the medical panel. The letter disagreed with the panel's opinion and summarized Dr. Pearl's opinion of the medical evidence, stating:

It is most likely that Mr. Brady's injury of January 2001 caused his neck injury which affected the nerves which innervate the diaphragm #'s 3, 4, and C3-C4 and C4-C5. This is the cause of his hypoxia as his other workup has been completely negative.

DISCUSSION AND CONCLUSIONS OF LAW

The Commission first notes Mr. Brady's request to submit a new letter from one of his

¹ Collapse of all or part of a lung.

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physicians to the medical panel for consideration. Commission Rule R602-2-2(b) permits the ALJs, at their discretion, to submit new medical evidence to the panel “[w]here there is a proffer of new written conflicting medical evidence.” The Commission has reviewed the medical records exhibit, previously submitted to the medical panel, and Dr. Pearl’s letter and finds that the letter does not provide any new written conflicting evidence that was not previously available to the medical panel for consideration.

Mr. Brady’s primary argument, in his motion for review, is that the evidence shows his January 24, 2001, work injury is the direct cause of his permanent and total disability. Both Mr. Brady and YESCO submitted various medical opinions supporting their respective arguments on direct causation. In light of these conflicting opinions, the Commission appointed an impartial medical panel to evaluate Mr. Brady’s claim. The panelists reviewed Mr. Brady’s entire relevant medical history, personally examined Mr. Brady, and reviewed the opinions of both parties’ medical consultants and treating physicians. Based on all this information, it was the panel’s opinion that the onset of Mr. Brady’s hypoxia and pain management difficulties occurred **after** the December 2001 auto accident, and thus it was the auto accident that was the direct cause of Mr. Brady’s permanent and total disability—not the January 2001 work accident. Given the panel’s expertise and independence, the Commission finds the panel’s opinion persuasive.

In summary, the Commission denies Mr. Brady’s request for the medical panel to consider further evidence. The Commission concurs with Judge La Jeunesse’s denial of benefits based on a determination that Mr. Brady’s permanent total disability was not directly caused by his work injury.

ORDER

The Commission affirms Judge La Jeunesse’s decision. It is so ordered.

Dated this 28th day of October, 2008.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

